

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-185

PROCEDURAL HISTORY

On December 18, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Peninsula School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 18, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 20, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On January 12, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on January 17, 2024. OSPI invited the Parent to reply.

On January 17, 2024, OSPI received additional information from the Parent. OSPI provided the District a copy on January 31, 2024.

On January 26, 2024, OSPI received the Parent's reply. OSPI provided the District a copy on January 31, 2024.

On January 31, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on February 5, 2024. OSPI forwarded the information to the Parent on February 6, 2024.

OSPI considered the information provided by the Parent and the District as part of its investigation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 1, 2023, per the Parent's complaint. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Beginning January 2023, did the District follow proper procedures for implementing the Student's IEP provisions that related to specialized transportation services, specifically bus paraeducator support?
2. Beginning January 2023, did the District follow proper procedures for responding to any bullying of the Student that may have taken place on the bus that impacted the Student's ability to access a free appropriate public education?

LEGAL STANDARDS

IEP Implementation: A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F.3d 811 (9th Cir. 2007).

Bullying and Harassment: Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that their IEP is no longer providing educational benefit. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013).

Harassment or bullying that adversely affects that student's education, may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9th Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994). Harassment and bullying of a student eligible for special education that prevents the student from receiving meaningful educational benefit constitutes a denial of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student's IEP accordingly. A fundamental step in preventing disability-based harassment is developing and disseminating a policy that prohibits such harassment. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013).

Authority of State Education Agencies: State education agencies have "general supervisory responsibility" to ensure compliance with the IDEA. 34 CFR § 300.600; *see also Letter to Warkomski* (Mar 30, 2001); *Letter to Librera* (May 26, 2004) ("The SEA is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State.")

IEP Definition: In part, an IEP must contain a statement of the special education services, related services, and supplementary aids to be provided to the student. WAC 392-172A-03090.

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate

programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of other health impairment, was in the eleventh grade, attended a District high school, and the Student's January 2022 IEP individualized education program (IEP) was in effect. During the 2022–23 school year, the Student was also enrolled in a vocational program at a location separate from that of the high school.
2. The 2022–23 school year began on August 31, 2022.
3. According to attendance reports, the Student was absent on approximately 15 occasions during the 2022–23 school year.
4. The Student's IEP team developed a new IEP for the Student on January 11, 2023. In part, the January 2023 IEP noted the Student required "general transportation."
5. During this investigation, the District stated:

[During the] 2022-2023 [school year], the District placed a paraeducator on the bus to [the vocational school] near the beginning of the school year to provide educational support to multiple students with IEPs who were attending the various programs there. This paraeducator was not assigned to any one student in particular, nor was he assigned [this role] in response to behavioral concerns on the bus.

In June [2023], on or around the date of the bus incident, the paraeducator [had been] reassigned to other responsibilities.
6. The Parent's complaint request and reply jointly read, in part:

At the end of last school year, we learned of ongoing bullying at the high school, particularly on the bus between the high school and the [location of] the Student's vocational program. We noted constant vaping on the bus (a threat to Student's health), kids throwing things out of bus windows, and water in Student's face...The paraeducator who was supposed to [have been] there to help Student was not [present] and had largely

been absent through[out] the school year...I had to drive Student to-and-from the vocational school for the entire last month of school, since this was not addressed.

...

When Student started attending the vocational school, a paraeducator was actually [present] from the start of the school year until the end of the [2022-2023 school] year, [though] the paraeducator was frequently absent [towards the end of the 2022-2023 school year].

7. The District's response read, in part:

The District is only aware of one alleged bullying incident on the bus to/from the District and the vocational school. On or about June 9, 2023, Parent left a voicemail on the high school line, which was forwarded to the vice principal. Parent reported an alleged incident on the bus between the school and the vocational school. His voicemail indicated that he knew the students who were allegedly involved, had already contacted their parents, was waiting to address the incident with the bus driver and was requesting a call back from the school. He also indicated that he would take Student to and from the vocational school for the remainder of the school year.

The vice principal returned Parent's call within a couple of days and identified herself as the administrator who would investigate the incident, that she was sorry to hear what happened.¹

...

On June 14, 2023, the Parent emailed the vice principal, informing her that the following day would be the Student's final day at the vocational school.²

8. In response to an email from the Parent, on June 15, 2023, the resource teacher wrote, "I had not heard anything about the bullying issue on the vocational school bus, I will inquire with Student today."
9. According to progress reporting, as of the end of June 2023, the Student made sufficient progress on four of his five IEP goals. The Student made emerging skill progress on one of his five IEP goals, the written language goal.

Summer 2023

10. On August 7, 2023, the Parents and District met.

11. The District's response read, in part:

On August 7, 2023, the District met with Parents regarding the alleged June 2023 bullying. This meeting was not an IEP team meeting. Parents were concerned regarding the bus driver's alleged lack of response and their understanding of Student's accommodations on the bus from the District to the vocational school. The bus driver reported that nothing

¹ The District's response included a written statement authored by the vice principal. Said statement was supportive of this understanding of the factual circumstances regarding the Parent's call on June 9, 2023.

² In part, the Parent's June 14, 2023 email read, "[I] love Student, especially after the huge bullying incident on the bus to and from the vocational school. Student is so resilient. He should not have to be but he is."

took place on the bus ride and review of the video did not show an incident.³ The District asked Parents how they would like to move forward with Student, and Parents replied that they wanted para support both at the vocational school and on the bus. However, when asked if they had any concerns about the behaviors of other students as the school year began, they stated that they did not.

12. August 7, 2023 meeting notes showed, in part:

- According to the Parent, on or about June 9, 2023, students on the bus had “thrown stuff out the windows” and “squirted water in Student’s face.”
- Regarding the June 9, 2023 bus incident, after-the-fact, the bus driver said “nothing [had] happened.”
- The Parent expressed a desire that “accommodations for the [bus] ride [to the vocational school by implemented].”
- A staff person had reviewed the “bus video [and] did not see anything [notable].”
- In the spring of 2023, another student that rode the bus between the District school and the vocational school had an assigned paraeducator while on the bus, due to “behavior[al]” needs. On or about June 9, 2023, said paraeducator was not present on the bus.
- The Parent stated the Student needed paraeducator support, both at the vocational school and “on the bus.”

According to the District, the August 7, 2023 meeting was attended by the assistant superintendent, principal, and Parent; and assistant superintendent and principal “did not commit to having a paraeducator on the bus to [the vocational school, and, during the conversation] there was no indication of what was listed in the Student’s IEP,” though the District acknowledged, “a paraeducator was requested [by Parent] at the August 7, 2023 meeting.”

13. According to the Parent’s reply, he left the August 2023 meeting with the understanding that a paraeducator “would be provided throughout the school day, including on the bus.”

2023–24 School Year

14. The District’s 2023–24 school year began on September 5, 2023.

15. At the start of the 2023–24 school year, the Student continued to eligible for special education services, was in the twelfth grade, attended a District high school, and the Student’s January 2023 IEP was in effect. During the 2023–24 school year, the Student was also enrolled in a vocational program at a location separate from that of the high school.

³ A separate portion of the District’s response read, in part, “Nothing was seen [on the video] related to the alleged incident [of bullying].” In his reply, the Parent noted the District never provided him a copy of the video of the bus ride (or rides) in question, and it was not clear District staff reviewed the correct video, as there was confusion over the Student’s “bus number” and that the Parent had conveyed these concerns to the District.

16. According to the District, during the 2023–24 school year, “there [was] no paraeducator on the bus to [the vocational school].”
17. According to attendance reports, the Student was absent on approximately 16 occasions in fall 2023. According to the District, these absences resulted, in part, from a four-day suspension and a “few...days” for the Student to recover “from a skiing accident.”
18. According to the Parent’s reply:

Behavioral issues on the bus continued into the current school year. Students continued to vape, destroy seats, and bully Student. At one point, the behavior was so bad that the bus driver had a mental breakdown and was crying over the students’ behavior. I am sure bus video recordings...would show this.
19. A September 8, 2023 email exchange between staff and Parent showed, in part, the Student would be provided with paraeducator support for at least a portion of the time the Student was in the school building, but the parties did not discuss whether the Student required paraeducator support while on the bus between the District school and the vocational school.
20. According to the Parent, a new annual IEP for the Student was developed on January 11, 2024, and said IEP does not state the Student requires a paraeducator on the bus to and from the vocational school, even though the Parent believed it was necessary for a paraeducator to be on the bus, not just for the Student’s sake but for any other special education students that were also on the bus.
21. According to the District, it “has received no written reports of bullying on Student’s bus this school year.”
22. The Parent’s complaint request read, in part:

The vice principal has interrogated Student several times over [fall 2023]...without taking [the] bullying he has been subjected to, [nor the] Student’s cognitive abilities, into account...[In December 2023], the vice principal [said] she planned to refer Student to on-site therapy services...Student [was] severely depressed and noncommunicative [after he was assigned a short-term suspension in early December 2023]...not coming out of his room and [being] uninterested in doing usual weekend and holiday activities.
23. In relation to the Student’s progress in IEP service areas, during this investigation, the District highlighted, in part, the following present levels from the Student’s January 2024 IEP:

Social/Emotional/Behavioral...Student’s teacher in the...program says that Student is well-informed, self-assured, and eager to please to a fault...is an excellent student who always has a positive attitude and a good sense of humor. He is well-regarded and respected by his peers in the classroom...However, self-advocacy, in both the classroom as well as in the community and the work world, are imperative and necessary skills for Student, and, as such, shall continue to be addressed under the domain of self-advocacy.

...

Reading...Student is always a positive participant and does the work asked of him.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged beginning January 2023, the District did not follow proper procedures for implementing the Student’s IEP provisions that related to specialized transportation services, specifically such services that related to paraeducator support on the bus.

A district must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

Neither the January 2023 IEP nor the January 2024 IEP stated the Student required paraeducator support while on the bus to-and-from the vocational school. Accordingly, it cannot be said the District failed to implement such a service. Therefore, OSPI does not find a violation related to the implementation of the IEP. (Whether proper IEP development procedures were followed, though—and whether the Student required paraeducator support on the bus—is a separate issue, which is discussed in Issue 2, below.)

Issue 2: Response to Bullying – The Parent alleged beginning January 2023, the District did not follow proper procedures for responding to any bullying the Student may have experienced while riding the bus, and that this impacted the Student’s ability to access FAPE.

Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a FAPE in accordance with the student’s IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student’s needs to change such that their IEP is no longer providing educational benefit. A fundamental step in preventing disability-based harassment is developing and disseminating a policy that prohibits such harassment.

During this investigation, minimal documentation was produced regarding any potential bullying the Student was subjected to while riding the bus to-and-from the vocational school. For example, in part, the Parent stated on at least one occasion in June 2023, another student threw “water in Student’s face” and Parent also described other generally disruptive behavior occurring on the bus, and as regards the June 9, 2023 incident, the bus driver stated, “nothing [notable had] happened” and a staff person reviewed a certain “bus video [and] did not see anything [notable];”⁴ and the Parent stated the behaviors students demonstrated on or about June 9, 2023 continued during the 2023–24 school year.

Furthermore, even if incidents occurred on the bus, it does not appear there was an impact on FAPE. For example, progress reporting showed the Student, generally speaking, was able to make progress on Student’s IEP goals, and the Student’s absences during the 2023–24 school year were

⁴ In his reply, the Parent noted he conveyed concerns to the District regarding not receiving a copy of the bus video, and it was not clear District staff reviewed the correct video, as there was confusion over the Student’s “bus number”.

not conclusively related to bullying the Student was subjected to while on the bus to-and-from the vocational school. For the above reasons, on the basis of the documentation provided to OSPI during this investigation, OSPI does not find the Student was subjected to bullying on the bus to-and-from the vocational school.

However, even if bullying did not occur, the Parent was sharing general concerns about the bus and the Student's emotional regulation and/or behavior management. Relatedly, the Parent made multiple requests for paraeducator support on the bus to-and-from the vocational school. Thus, even if bullying did not occur, upon investigation, OSPI finds there is a question of whether the District followed proper IEP development procedures in addressing the Parent's concerns and requests for paraeducator support. (OSPI has general supervisory responsibility to ensure compliance with all IDEA requirements.)

Here, it appears the Student was provided with paraeducator support while on the bus to-and-from the vocational school in spring 2023.⁵ At a meeting between the Parent, assistant superintendent, and principal on August 7, 2023, the Parent requested the Student be provided with some form of paraeducator support on the bus to-and-from the vocational school during the 2023–24 school year; the exact decision that was reached regarding this request was unclear⁶; and during the 2023–24 school year, the Student was not provided with paraeducator support on the bus to-and-from the vocational school.

The foregoing presents a violation of the IDEA. When a parent makes a request for a specific type of IEP support, proper procedures are for that student's IEP team to: (1) gather sufficient relevant information on the student's needs, including from the parent; (2) make a specific determination; and (3) provide a prior written notice to the parent clearly stating what decision was made and why. Here, these processes were not followed. For example, the August 7, 2023 meeting was not an IEP meeting, in that only the principal, assistant superintendent, and Parent attended the meeting. The Parent expressed a desire that the Student be provided with paraeducator support on the bus to-and-from the vocational school both in late spring 2023, as well as in August 2023. And, between August 7, 2023 and early February 2024, no prior written notices were issued in

⁵ The District stated the purpose of the paraeducator on the bus to-and-from the vocational school was "to provide educational support to multiple students with IEPs who were attending the various programs" at the vocational school. While the District did not explicitly state whether the Student was one of "the multiple students with IEPs" whom the paraeducator was supposed to assist, the Student did have an IEP and did attend the vocational school, so, given this information, it is completely reasonable to conclude the Student received shared paraeducator support on the bus to-and-from the vocational school in spring 2023.

⁶ For example, the meeting notes do not clearly state what decision was made in response to this parental request and the Parent stated he left the meeting believing the Student would thenceforth be provided with some form of paraeducator support on the bus. However, the District suggested bus paraeducator support was not provided to the Student following the August 2023 meeting because, during that meeting, the Parent did not articulate "any concerns [regarding] the behaviors of other students" on the bus. Between August 7, 2023 and early February 2024, no prior written notices were issued in direct response to the Parent's request for paraeducator support on the bus to-and-from the vocational school.

direct response to the Parent's request for paraeducator support on the bus to-and-from the vocational school, indicating no decision was made.

To address this failure to follow proper IEP procedures, the Student's IEP team will be required to meet to discuss whether the Student has a disability-based need for paraeducator support on the bus to-and-from the vocational school. Subsequent to this IEP team meeting, the District will provide the Parent with a prior written notice that clearly states what decision has been made and the data relating to the Student's needs resulting from the Student's disability that supports that decision.

CORRECTIVE ACTIONS

By or before **March 6, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **March 1, 2024**, the Student's IEP team will be required to meet to discuss whether the Student requires paraeducator support on the bus to-and-from the vocational school. Subsequent to this IEP team meeting, the District will provide the Parent with a prior written notice that clearly states what decision has been made and the data relating to the Student's needs resulting from the Student's disability that supports that decision.

By **March 6, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

RECOMMENDATIONS

First, during this investigation, the Parent raised matters unrelated to the issues being investigated as part of this community complaint. For example, in part, the Parent alleged certain paraeducator support was not being provided while the Student was at the vocational school itself. OSPI recommends the Parent communicate this concern to the District and request an IEP team meeting to discuss the same. OSPI further recommends the Parent and District consider whether either a facilitated IEP meeting or a mediation would be helpful in structuring this conversation. (In its opening letters, dated December 20, 2023, OSPI included information on Sound Options.

With the publication of this letter, OSPI will again include informational pamphlets on facilitated IEP meetings and mediations through Sound Options.)

Second, during this investigation, the Parent appeared to allege the District discriminated against the Student. OSPI does not have authority through the Special Education Community Complaint process to investigate allegations of discrimination. However, the U.S. Department of Education, Office for Civil Rights has the authority to investigate discrimination claims under Section 504 of the Rehabilitation Act. Please contact their office if you would like them to investigate your allegations:

Office for Civil Rights

U.S. Department of Education

Email: OCR.Seattle@ed.gov

Website: <http://www.ed.gov/about/offices/list/ocr/index.html?src=oc>

You may also file a discrimination complaint with the superintendent of the District or the District's Civil Rights Coordinator. For more information about filing a discrimination complaint with the District, please visit <http://www.k12.wa.us/Equity/Complaints.aspx> or contact the OSPI Equity and Civil Rights Office at 362-725-6162.

Dated this 13th day of February, 2024

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)